

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 639 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ZARDULLAKHAN @ MEHTABKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN A. PAHWA for Petitioner

AGP Mr. Samir Dave for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/09/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Ms. Suman A. Pahwa for
the petitioner and learned A.G.P. Mr. Samir Dave for

the respondent Nos. 1 to 3.

2. The detention order dtd. 8/12/98 passed by the respondent No. 2 - Commissioner of Police, Vadodara City, Vadodara, against the petitioner by virtue of powers conferred under Sec. 3 (1) of Gujarat Prevention of Anti-social Activities Act, 1985 (PASA for short), is challenged in the present petition under Article 226 of the Constitution of India.

3. The order of detention alongwith the grounds supplied to the petitioner by the authority, are produced on record vide Annexures A and B, respectively. The grounds for detention interalia indicate that four criminal cases have been registered against the petitioner which are as under ;

[1] C.R. NO. I 111/93 registered at Ghatlodiya Police Station, Ahmedabad City, for the offences made punishable under Sec. 392 read with Section 114 of IPC and under Sec. 25 (1) (c) of Arms Act. The matter is pending for investigation.

[2] C.R.NO. I 171/93 registered at Karanj Police Station, Ahmedabad City, for the offences made punishable under Sec. 307, 394, 120 (b) read with Sec. 34 of IPC and under Sec. 25 (1) (a) of Arms Act. The matter is pending for investigation.

[3] C.R.NO. II 2/98 registered at D.C.B. Police Station, for the offences made punishable under Sec. 25 (1) (a) and 29 of Arms Act as well as under Sec. 135 of Bombay Police Act, which is also pending for investigation.

[4] C.R.NO. I 46/98 registered at D.C.B. Police Station for the offences made punishable under Sec. 120 (a) (b) and Sec. 115 of IPC. It is also pending for investigation.

The grounds further indicate that three witnesses on assurance of anonymity have supplied information of anti-social activities against the petitioner and their statements have been recorded on 12/9/98, 19/9/98 and 14/10/98.

4. In consideration of above stated material of

criminal cases as well as statements of witnesses, respondent NO. 2 - detaining authority has concluded that the petitioner is a "dangerous person" within the meaning of Sec. 2 (c) of PASA. That resort to enforcement of general provisions of law are not sufficient to prevent the petitioner from continuing his anti-social activities which is prejudicially affecting the maintenance of public order and as such the impugned order is passed.

5. The petitioner has challenged the impugned order on numerous grounds. It is submitted that out of the three criminal cases, first two criminal cases are registered in the year 1993, thereby on the date of taking action on 8/12/98, the said incidents were stale incidents. Furthermore, it is contended that on the date of passing of order, the petitioner-detenu was under judicial custody and the said fact has not been considered by the detaining authority while passing the detention order. It is also submitted that the statements of anonymous witnesses, on which reliance has been placed by the detaining authority, have not been personally verified by the detaining authority and as such the subjective satisfaction reached by the detaining authority is vitiated. In order to support the submission, reliance is placed on the matter of Wahab Shaikh Vs. S.N. Sinha, Commissioner of Police, Ahmedabad and ors. reported vide A.I.R. 1989 S.C. 2265 and also on the matter of Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and ors., reported vide 1995 (2) G.L.R. 1268. The learned A.G.P. Mr. Samir Dave has submitted that the detaining authority has personally verified the statement of witness NO. 1 who deposed about the incident dtd. 12/9/98. He has also verified the statement of witness No. 2 who has stated about the incident dtd. 9/9/98. That detaining authority has not placed reliance on witness No. 3, thereby it cannot be said that the order is vitiated.

6. On scrutiny of material it cannot be disputed that the first two criminal cases registered against the petitioner-detenu, were the incidents of year 1993 and thereafter for the first time second incident has been registered in the year 1998. That in order to attract the provisions of Sec. 3 (1) of PASA to brand the petitioner as a "dangerous person" as defined under Sec. 2 (c) of the Act, it is necessary to form an opinion that the person is habitual offender. Term habitual offender has been construed by the Supreme Court in the above stated authority in the matter of Mustakmiya Jabbarmiya

(Supra), that there should be continuity of the activity within a time frame. Isolated incident cannot provide golden thread of continuity so as to brand the person as habitual offender.

In the instant case, it is difficult to hold that third case registered against the petitioner, could be said to be as a part of continuous activity in the background of earlier two cases, which were registered in the year 1993. Furthermore, the detaining authority has taken into consideration the statements of anonymous witnesses who have stated about the anti-social activities of the petitioner as reproduced in para 3 of the grounds for detention. However, the copy of statement provided to the petitioner alongwith the grounds for detention, clearly disclose that statement of witness No. 3 who has stated about the incident of 14/10/98, has not been verified at all by the detaining authority. Thus, the facts stated by the detaining authority in the grounds of detention did not contain factually correct statement to the documents supplied.

7. Furthermore, in the matter of Kanubhai Manilal Nayak Vs. Commissioner of Police, Vadodara City, Vadodara and Ors., decided on 27/7/99 by this Court vide S.C.A. NO. 217/99, this Court has expressed the view that statement recorded by the sponsoring authority, if not verified either by the detaining authority or sub-ordinate authority at the instance of detaining authority, cannot form a part of the material to come to the subjective satisfaction and if subjective satisfaction has been reached on such material, it is vitiated. Same view is also expressed in the matter of Khanusing Dhulsing Rathod Vs. State of Gujarat and ors., in S.C.A. NO. 7655/99 decided on 22/7/99.

8. In the instant case, it is undisputed that the detaining authority - respondent NO. 2 has not at all verified the statement of witness No. 3 for which privilege under Sec. 9 (2) has been claimed and grounds of detention have been formulated by detaining authority, thereby subjective satisfaction reached in passing the impugned order is vitiated and the order cannot be sustained.

9. On the basis of aforesaid discussion, the petition is allowed. The impugned order dtd. 8/12/98 passed by the respondent No. 2 - Police Commissioner, Vadodara against the petitioner - detenu is hereby quashed and set aside and the petitioner - detenu namely Zardullakhan alias Mehtabkhan Pathan is ordered to be set

at liberty forthwith, if not required in any other case.

Rule is made absolute accordingly.

Rafik*